Marshall v. *Sherman* (1895) 148 N. Y. 9, according to the varying theories as to whether the liability is contractual or one imposed by law. Cf. 5 COLUMBIA LAW REVIEW 606. On this contractual theory it has been held that where a corporation is formed for the express purpose of doing business in another State, and a creditor's action is brought in that State, the *lex fori* will be enforced against the stockholder. *Pinney* v. *Nelson* (1901) 183 U. S. 144. But in the case under consideration, the plaintiff was seeking to enforce a liability imposed by a foreign statute in derogation of the common law as well as in opposition to the limited liability of the English incorporating act. The question is suggested at once as to whether we have here a conflict of rights or of remedies. If the provisions of the English statute be regarded as establishing primarily a legal remedy, something connected with the enforcement of a right, then it is exclusive of all foreign statutes so far as that court is concerned. But if the double liability of the California statute can be regarded as a new right conferred upon the creditor and the conflict be one of rights and not of remedies, the *lex loci contractus* should prevail. See Dicey, Conflict of Laws, Chap. 31. In this respect there is a distinct tendency to enlarge the scope of the term "remedies," and where the right of action depends upon a foreign statute rather than upon the common law, to refuse to enforce it unless it is in practical conformity with the local statute. *Wooden* v. *R. R. Co.* (1891) 126 N. Y. 10; *Slater* v. *R. R. Co.* (1903) 194 U. S. 120; cf. 4 COLUMBIA LAW REVIEW 503. The result reached by the Court of King's Bench would seem a very proper conclusion of the foregoing argument. The Court had no power to enforce the California statute and, irrespective of the question whether a stockholder might under certain circumstances be held to have waived by contract, express or implied, the protection of the English limited liability acts, the decision is authority for the proposition that the stockholder's protection cannot be waived by the act of the corporation itself. This view of the character of the liability imposed seems to be adopted in New Jersey by statute. N. J. Corp. Supp., § 131; Beale, For. Corp., § 453.

PUBLIC USE IN EMINENT DOMAIN.—The courts of this country appear to be hopelessly divided as to what constitutes a public use to justify the taking of private property under the power of eminent domain. 4 COLUMBIA LAW REVIEW 133. It has been held that a right on the part of the public to use or control is an essential element. *Matter of Warehouse Co.* (1884) 96 N. Y. 42; *Gaylord* v. *Sanitary Dist.* (1903) 204 Ill. 576. But the tendency, first seen in the mill cases, *Olmstead* v. *Camp* (1866) 33 Conn. 532, to regard this view as too narrow has experienced a decided development. Especially is this true in the Western jurisdictions, where the courts very generally have upheld the taking of land for purposes of private irrigation and mining development. While these decisions in some cases are supported by specific Constitutional provisions, *Irrigation Co.* v. *Flathers* (1899) 20 Wash. 454; *Irrigation Co.* v. *Railroad Co.* (1902) 30 Colo. 204, and in others are brought within the conservative rule of *Gaylord* v. *Sanitary Dist.*, supra, by regarding those who take under the law as forming a quasi-public organization, *Irrigation Dist.* v.

Collins (1895) 46 Neb. 411; *Irrigation Co.* v. *Klein* (1901) 63 Kan. 484, in the majority of cases the result has been reached by following out the view of the mill cases that great public utility or benefit alone may constitute a public use. *Mining Co.* v. *Seawell* (1867) 11 Nev. 394; *Oury* v. *Goodwin* (1891) 3 Ariz. 255; *Byrnes* v. *Douglass* (1897) 83 Fed. 45. In taking this position the courts have refrained from laying down any definition of public use or any set test in respect of it. But their tendency, especially where the doctrine is invoked in favor of a single individual, *Ellinghouse* v. *Taylor* (1897) 19 Mont. 462, is to make public use equivalent to public advantage.

Eminent domain is a power inherent in government by virtue of its sovereignty, and intimately connected with political and economic necessity. *Kohl* v. *U. S.* (1875) 91 U. S. 367, 371. It has been described as "the right to appropriate private property to particular uses, for the purpose of promoting the general welfare." Lewis, Em. Dom., 2nd ed., 163. The Constitution of the United States provides that private property shall not be taken "for a public use without just compensation"; and similar expressions are to be found in the Constitutions of most States. By the established view these constitutional provisions are to be regarded not as mere expressions of the power of eminent domain, but as limitations upon it. *People* v. *Railroad Co.* (1899) 160 N. Y. 225, 237; *Brown* v. *Gerald* (Me. 1905) 61 Atl. 789. It would seem, therefore, that a holding that public use is co-extensive with public welfare is too broad. On the other hand, if it be conceded that the limitation should be interpreted with regard to the nature of the underlying power, the doctrine that there can be no public use without public participation or control is unnecessarily rigid. A middle ground is suggested by a recent case in the Supreme Court of the United States, which upholds the taking of land by an individual for private irrigation. *Clark* v. *Nash* (1905) 198 U. S. 361.

The court adopts the view, recognized in previous dicta, *Scudder* v. *Falls Co.* (1832) 1 N. J. Eq. 694, 728; *Falbrook Irr. Dist.* v. *Bradley* (1896) 164 U. S. 112, that the existence of a public use so largely depends upon the peculiar circumstances and conditions surrounding the locality in which the case arises, that no definite rule can be laid down in regard to it. The decision itself is inconsistent with the "public participation" test, and must, in the last analysis, rest on the principle that public advantage may constitute a public use. At the same time the court expressly repudiates the broad doctrine that "private property may be taken in all cases where the taking may promote the public interest." This repression of the tendency to nullify the doctrine of public use as a constitutional limitation properly defines the court's recognition of the need of flexibility on this branch of the law. The holding is important as it tends to reconcile much of the apparent inconsistency in the previous decisions. It has already been followed in connection with private mining development. *Baillie* v. *Larson* (1905) 138 Fed. 177.

ADMISSIBILITY OF DECEASED ACCOUNTANT'S ABSTRACT OF LOST ACCOUNT BOOKS.—As early as 1609 the custom of using account books as evidence was accorded legislative recognition by the restrictive